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SUBJECT: CAMBODIAN BAR ASSOCIATION ALTERING POLICIES,
RELATIONSHIPS

REF: 7/31/07 CAMPBELL-DORSEY E-MAIL

Not for dissemination on the Internet.

¶1. (SBU) Summary. Last week, the Ambassador met with Cambodian Bar Association (CBA) President Ky Tech laying the groundwork for dialogue to rebuild a relationship between USAID and the CBA after USAID suspended support earlier this year (ref). A renewed relationship addresses the need for a structure under which USAID and the CBA can restart the disrupted USAID-funded legal fellows program. Still unresolved is Ky Tech's apparent lack of commitment to allow lawyers to work with non-governmental organizations. What is certain is Ky Tech's resolve that the CBA take charge to ensure all lawyers in Cambodia abide by CBA regulations. End summary.

REBUILDING USAID - CBA RELATIONSHIP

¶2. (SBU) Last week, the Ambassador met with CBA President Ky Tech laying the groundwork to rebuild a relationship between the CBA and USAID. The meeting was partially prompted by Ky Tech's recent decisions that the 2007 class of intern lawyers placed with some local human rights non-governmental organizations (NGOs) not be admitted to the Bar unless they resign from those internships. Further, Ky Tech told the intern lawyers that the Bar may not admit them if they have employment contracts with NGOs when they apply for Bar membership. Ky Tech maintains that he questions the independence of lawyers who do not work for other lawyers as they would be supervised by non-legal professionals in an NGO. Starting in 2006, USAID funded a legal fellows program sponsoring internships for 12 intern lawyers with human rights NGOs. The 2006 class of law fellows was successful and completed their training with NGOs without intervention from the CBA. On May 10, the USAID-sponsored class of 2007 legal fellows resigned en masse from their internships in hopes of salvaging their chances to enter the Bar. USAID made the decision to suspend support for collaborative projects with the CBA until an acceptable, formal working agreement, such as a memorandum of understanding, is laid out. Additional fallout was the departure of an American Bar Association (ABA)-sponsored legal advisor to the now-closing Legal Consultation Office at the Bar's Lawyer Training Center. The advisor felt he could no longer be effective after a perceived lack of support from the CBA.

CBA'S UNCERTAIN RELATIONSHIP WITH NGOS

¶3. (SBU) The Ambassador welcomed the news that the CBA would support the lawyers in a high-profile land case. In part, this was a way to encourage positive steps while signaling

concern over the perception that the CBA is exercising muscle to clamp down on human rights NGOs. The Ambassador was referring to a high-profile Ratanakiri land dispute case in which legal aid NGOs are representing poor community members.

The community members are filing a suit against Keat Kolney, sister of the Senior Minister of the Ministry of Economy and Finance and wife of Secretary of State for the Ministry of Land. She is alleged to have illegally acquired some of the community's land. In retaliation, she filed a complaint with the CBA against the legal aid lawyers. The Bar is currently backing the lawyers. (However, the lawyers told USAID Officers that in a July 4 closed-door meeting, Ky Tech expressed anger at the lawyers for going public with the complaints and for talking with the media. He also warned them about getting involved with "political" activity. Ky Tech told them about his concern that lawyers working for NGOs "hinders the independence of lawyers" -- the same message he brought up during his meeting with the Ambassador.)

¶4. (SBU) During his meeting with Ky Tech, the Ambassador was encouraging of the CBA's current support for the Community Legal Education Center (CLEC) and Legal Aid of Cambodia (LAC) lawyers who came under fire in the Ratanakiri case. The Ambassador also applauded the CBA's cooperation with last month's adoption of the Internal Rules of the Extraordinary Chambers in the Courts of Cambodia (ECCC) to bring Khmer Rouge perpetrators to justice. However, he also stated he did not see eye-to-eye with Ky Tech on the issue of lawyers working with NGOs to protect the rights of the poor. The Ambassador urged the CBA to find a way for lawyers to continue their jobs with NGOs. Ky Tech responded that he supports the work of NGOs and supports lawyers helping the poor but that he wants the work to take place with the cooperation of the CBA and under a legal framework such as

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retainer relationships.

FATE OF INTERN LAWYERS STILL UNKNOWN

¶5. (SBU) On July 30, the former legal fellows met with a USAID Officers for a read out of the Ambassador's meeting with Ky Tech. Some of the intern lawyers relayed news that they are seeking employment with the Cambodian Defenders Project (CDP) and LAC. CDP and LAC seem to have a positive relationship with the CBA and had previous (though now expired) memorandums of understanding with the CBA regarding legal work through the NGOs. However, the CBA is still trying to mandate that the intern lawyers are not allowed to be "employed" by the NGOs but that they could be hired through retainer agreements or a similar arrangement. Human rights NGO Director Naly Pilorge of LICADHO also attended the meeting with the law fellows and she stated that a situation where lawyers could only work under retainer agreements would not be acceptable to LICADHO. This issue remains unresolved.

COMMENT

¶6. (SBU) The legal fellows program was initiated while CBA was immobilized by internal disputes stemming from disagreements over whether Ky Tech had rightful claim to the Bar presidency. As the Bar moves beyond this dispute phase, Ky Tech is asserting his command of the association's mandate. Some observers say that Ky Tech is a known CPP member and that he is trying to quiet human rights groups for political reasons. In particular, some say that he does not want to see NGOs employing the legal system to support human rights and judicial reforms. Others recognize the role of the CBA in formalizing and monitoring the professional behavior of its members and say that Ky Tech's MOU requirements are an extension of that role.

¶7. (SBU) The Ambassador's discussion with Ky Tech leaves the

door open for continued dialogue between USAID and the CBA. The relationship may look slightly different than before but will now likely be codified in an MOU. Post is hopeful that a mutually agreeable MOU will lay the groundwork for a continued legal training programs, such as the law fellows program, possibly starting as early as May 2008, and the resurrection of ABA legal technical assistance to the Lawyer Training Center.

18. (SBU) In practice, lawyers are still working with NGOs. A few examples of NGOs in Cambodia that continue to have lawyers on staff are: CLEC, CDP, LAC and the Cambodian Center for Human Rights (CCHR). But it appears that the CBA is attempting to consolidate control of the legal profession by mandating the types of professional relationships that lawyers can have and thus clamping down on the near-absolute freedom lawyers used to have to practice law with NGOs in Cambodia. At the end of the day while lawyers are likely to find structures allowing them to work with NGOs, the episode has already sent a chilling message to lawyers with NGOs that they are under Ky Tech's watch. Despite our concern about these developments, we note that regulating lawyers' adherence to internal rules and professional conduct are normal roles played by Bar associations in most countries. We will seek to engage with Ky Tech both on the political level and via negotiation of an MOU to keep him on the right side of that line. (Note: We forwarded to the Department copies of a letter from the Ambassador to the ABA President and from USAID Acting Mission Director to Ky Tech reiterating points from the Ambassador's meeting.)

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